

## **Part 4 – B**

### **ACCESS TO INFORMATION PROCEDURE RULES**

#### **1. Scope**

These rules apply to all meetings of the Council, the Overview and Scrutiny Commission and Panels, the Standards and General Purposes Committee, all other committees and sub-committees and public meetings of the Cabinet and Cabinet sub-committee (together called meetings).

#### **2. Additional Rights to Information**

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

#### **3. Right to Attend Meetings**

Members of the public and media may attend all meetings subject only to the exceptions in these rules.

#### **4. Notices of Meeting**

The Council will give at least five clear working days notice, or any minimum amount of time set by statute, of any meeting by posting details of the meeting at the Merton Civic Centre, London Road (the designated office) and on the Council's website ([www.merton.gov.uk](http://www.merton.gov.uk)).

#### **5. Access to Agenda and Reports Before the Meeting**

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and on the Council's website at least five clear working days before the meeting.

If an item is added to the agenda later, the revised agenda and each such report will be available to the public and open to inspection as soon as the report is available to Councillors.

#### **6. Supply of Copies**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

- (c) any background documents identified in the report or supplied to councillors in connection with the report to any person on payment of a charge for postage and any other reasonable costs.

## **7. Access to Minutes etc. after the Meeting**

The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the council or of the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## **8. Background Papers**

### **8.1 List of Background Papers**

The author will set out in every report a list of those documents (under the heading background papers) relating to the subject matter of the report which is his/her opinion;

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report but does not include published works or those that disclose exempt or confidential information as defined in rule 10 below.

### **8.2 Public Inspection of Background Papers**

The Council will make one copy of each background paper listed in a report available for public inspection for six years after the date of the meeting concerned.

## **9. Summary of Public's Rights**

These Access to Information Procedure Rules, as part of the Constitution, constitute the written summary of the public's rights to attend meetings and to inspect and copy documents. These Rules and

the entire Constitution are available at Merton Civic Centre and on the Council's website ([www.merton.gov.uk](http://www.merton.gov.uk)).

## **10. Exclusion Of Access By The Public To Meetings**

### **10.1 Confidential Information – Requirement to Exclude Public**

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee sections 17, 18 and 19 of these rules also apply

### **10.2 Exempt Information – Discretion to Exclude Public**

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee rules sections 17, 18 and 19 of these rules also apply

### **10.3 Meaning of Confidential Information**

Confidential information means information given to the Council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by reason of a Court Order.

### **10.4 Meaning of Exempt Information**

Exempt information means information which falls within the seven categories below and is not prevented from being exempt by virtue of the two qualifications in paragraph 10.5 if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

<b>Category</b>	<b>Condition</b>
1. Information relating to any individual	

<p>2. Information which is likely to reveal the identity of any individual</p>	
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).</p>	<p>“financial or business affairs” includes contemplated as well as past of current activities;</p>
<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.</p>	<p>“employee” means a person employed under a contract of service;  “labour relations matter” means – any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(b) (matters which may be the subject of a trade dispute, within the meaning of that Act); or any dispute about a matter falling within paragraph (a) above; and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</p> <p>“office-holder”, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is employee of the authority.</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	

<p>6. Information which reveals that the authority proposes (a) to give under any enactment a notice under of by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.</p>	
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution crime.</p>	

### 10.5 Qualifications to Exemption of Information

Information falling within paragraphs 10.4 is not exempt information if it falls within either of the following categories:

Category	Definition
<p>Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under the companies Act 1985; the Friendly Societies Act 1974; the Friendly Societies Act 1992; the Industrial and Provident Societies Acts 1965 to 1978; the Building Societies Act 1986; or the Charities Act 1993.</p>	<p>“registered” in relation to information required to be registered under the building Societies Act 1986(c), means recorded in the public file of any building society (within the meaning of that Act).</p>
<p>Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992(c)</p>	

## 11. Exclusion of Access by the Public to Reports

If the Chief Executive or the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee sections 18 and 19 of these rules also apply

## 12. Application of Rules to the Cabinet

- (a) **General Application.** Rules 13 – 24 apply to the Cabinet, its committees and sub-committees.
- (b) **Meetings to Take Key Decisions.** If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 14 (general exception) or Rule 15 (special urgency) apply. A key decision is as defined in Article 13.3 of this Constitution.

## 13. Procedure Before Taking Key Decisions

Subject to Rule 14 (general exception) and rule 15 (special urgency), a key decision may not be taken unless:

- (a) a notice has been published in connection with the matter in question setting out the matters required by regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; and
- (b) at least 28 clear working days have elapsed since the publication of the notice

## 14 General Exception

If a notice of a key decision has not been published in accordance with Rule 13 included in the forward plan, then subject to Rule 15 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until the proper notice period can be given;
- (b) the Chief Executive and the Leader have notified the Chair of the Overview and Scrutiny Commission and/or of the relevant panel, in writing, of the matter to which the decision is to be made;

- (c) the Chief Executive and the Leader have made copies of that notification available to the public at the offices of the Council and on the Council's website; and
- (d) at least five clear normal working days have elapsed since the Chief Executive and the Leader complied with (a) and (b)

Where such a decision is taken collectively, it must be taken in public unless it is likely that confidential or exempt information would be disclosed.

## **15 Special Urgency**

If by virtue of the date by which a decision must be taken, Rule 14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the Chair of the Overview and Scrutiny Commission, or, in the absence of the Chair of the Overview and Scrutiny Commission, the Mayor or in his or her absence the deputy Mayor, that the taking of the decision cannot be reasonably deferred.

## **16 Report to Council**

### **16.1 When the Overview and Scrutiny Commission can require a Report**

If the Overview and Scrutiny Commission thinks that a key decision has been taken which is not in compliance with Rules 13-15 above it may require a report to be made by the Chief Executive and the Leader to the Council.

### **16.2 The Leader's Report to Council**

The Leader will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that.

The report to council will set out particulars of the decision, the individual or body making the decision and if the leader is of the opinion that it was not a key decision the reasons for that opinion.

### **16.3 Quarterly Reports on Special Urgency Decisions**

In any event, the Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 15 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

## **17 Private Meetings of the Cabinet (Exempt Procedure)**

Any meeting of the Cabinet or any Cabinet committee which is proposed to be held wholly or partially in private session in order to deal with exempt or confidential business may only proceed in respect of those items of business in accordance with the following rules

- 1) A notice of the intent to hold a private meeting must be published at least 28 clear days prior to the meeting and that notice must indicate the reasons for the meeting to be held in private.
- 2) A further notice must be published at least 5 clear days prior to the meeting and that notice must include:
  - a.) The reasons for the meeting to be held in private
  - b.) Any representations received about why the meeting should be open to the public; and
  - c.) A statement of responses to such representations

## **18 Exempt Urgency Procedure**

Where the date of the meeting at which it is proposed to consider exempt or confidential information makes compliance with (17.1 above) impracticable the meeting may only be held in private where:

- a.) The Chair of the Overview and Scrutiny Commission (or in his/her absence The Mayor or in his or her absence the Deputy Mayor) has agreed that the meeting is urgent and cannot reasonably be deferred; and
- b.) a notice of that agreement is published as soon as reasonably practicable;

## **19 Record of Decisions**

After any formal meeting of the Cabinet, whether held in public or private, the Chief Executive or his or her nominee, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

## **20 Key Decisions by Individual Members of Cabinet and/or Officers**



## **20.1 Publicity**

Rule 13 above applies to decisions taken by individual members of the Cabinet and to officers whenever they take key decisions.

## **20.2 Record of Individual Decision**

As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet or a key decision has been taken by an Officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of paragraphs 7 and 8 will also apply to the making of decisions by individual decision makers. This does not require the disclosure of exempt or confidential information or advice from a political adviser.

## **21 Recording and Publishing of Non-Key Executive Decision**

21.1 The council is required to record and publish all Non-Key Executive Decisions (defined in Part 2, Article 13.3(c)(i) as decisions incurring expenditure of between £250,000-£499,999 or those significant one off decisions which constitute a departure from council policy in respect of the granting of permission or a licence or affecting the rights of an individual).

21.2 As soon as reasonably practicable after the non key executive decision has been taken by an officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, that states:

- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest declared by any executive member consulted in relation to the decision; and
- a note of dispensation granted in respect of any declared conflict of interest.
- the date by which a request to call-in the decision must be received.

21.3 Any background papers must be retained and made available for inspection for a period of four years from the date of the decision. These requirements do not apply to confidential or exempt information.

21.4 Confidentiality or the fact that exempt information forms part of the decision not a reason for non-publication. The officer will still need to publish the information to the effect that a decision has been taken but the confidential or exempt details will not be made public.

21.5 Non-key executive officer decisions are be subject to call-in and will therefore not be implemented until the call-in period has expired.

## **22. Overview and Scrutiny Commission's and Panels' Access to Documents**

Subject to Rule 23.1 below, the Overview and Scrutiny Commission and panels will be entitled to copies of any document which are in the possession of control of the Cabinet and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Cabinet, Cabinet committee or Sub-committee;
- or
- (b) any decision taken by an individual member of the Cabinet.

### **22.1 Limit on Rights**

The Overview and Scrutiny Commission and relevant panels will not be entitled to:

- (a) any documents that are in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political adviser.

## **23 Additional Rights of Access for Panels and Members**

### **23.1 Material Relating to Previous Business**

All councillors will be entitled to inspect any document, which is in the possession or under the control of the Cabinet and contains material relating to any business previously transacted at a private meeting unless it appears to the Proper Officer that allowing such inspection:

- (a) would involve the disclosure of exempt information of a description within paragraph 10.4 above; or
- (b) would involve the disclosure of the advice of a political adviser or assistant.

Notwithstanding sub-paragraph (a) above, a document shall be available for inspection if it falls within category 3 (information relating to the financial or business affairs of any particular person (including the

authority holding that information)) except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract or category 6 (information which reveals that the authority proposes (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person or (b) to make an order or direction under any enactment).

### **23.2 Material Relating to Key Decisions**

All councillors will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet, which relates to any key decision unless Rule 23.1 (a) or (b) above applies.

### **24 Nature of Rights**

These rights of a councillor are additional to any other right he/she may have.

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